

**BROTHELS LOCATION AND SIGNAGE BYLAW
SUBCOMMITTEE AGENDA**

TUESDAY 3 FEBRUARY 2009

AT 12.30PM

IN COMMITTEE ROOM 3, CIVIC OFFICES

Subcommittee: Councillors Sue Wells (Chairperson), Helen Broughton, Sally Buck, Ngaire Button, Yani Johanson, Claudia Reid, Bob Shearing, Mike Wall, and Chrissie Williams.

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1. **APOLOGIES**
2. **MINUTES OF THE BROTHELS LOCATION AND SIGNAGE BYLAW SUBCOMMITTEE OF 10 DECEMBER 2008**
3. **BRIEFING NOTE ON ISSUES RELATING TO BYLAWS MADE TO REGULATE SIGNAGE ADVERTISING COMMERCIAL SEXUAL SERVICES**

1. **APOLOGIES**

Nil.

2. **MINUTES OF THE BROTHELS LOCATION AND SIGNAGE BYLAW SUBCOMMITTEE OF 10 DECEMBER 2008**

**BROTHELS LOCATION AND SIGNAGE BYLAW SUBCOMMITTEE
10 DECEMBER 2008**

**A meeting of the Brothels Location and Signage Bylaw Subcommittee
was held on Wednesday 10 December 2008 at 1pm**

PRESENT: Councillor Sue Wells (Chairperson),
Councillors Helen Broughton, Sally Buck, Ngaire Button,
Yani Johanson, Claudia Reid, Mike Wall, and Chrissie Williams.

APOLOGIES: An apology for absence was received and accepted from Councillor
Bob Shearing

1. **CONSIDERATION OF STAFF REPORT – CONTROLS OF SIGNS ADVERTISING COMMERCIAL
SEXUAL SERVICES**

Terry Moody, Principal Adviser, Environmental Health, presented briefing notes covering:

- Options for the provision of a bylaw covering signage advertising commercial sexual services.
- The Christchurch City Brothels (Location and Signage) Bylaw 2004.
- Analysis of Territorial Authority Bylaws Signage Requirements.

The Subcommittee discussed potential options for the development of a bylaw covering signage advertising commercial sexual services. The following options were discussed:

1. Complete ban on signage
2. No prohibitions other than the City Plan via the bylaw
3. Status quo – existing prohibitions except in specified area in the Central City
(b) Amend status quo to extend to specified business and industrial zones
4. Restriction only on registered brothels citywide (excluding SOOBs).
5. Restriction only on SOOBs citywide (excluding registered brothels)
6. One consistent regulation across the City.

The Subcommittee held an initial discussion regarding the above options in regard to the Central City area, living zones, small business zones, large business zones, and industrial zones and was mindful of that any proposed bylaw would need to meet the requirements of the Local Government Act 2002, as well as being justified by one of the rationales in the Prostitution Law Reform Act. Staff advised that these rationales for regulating or prohibiting signage of commercial sexual services are whether that it:

- (a) is likely to cause a nuisance or serious offence to ordinary members of the public using the area,
- or
- (b) is incompatible with the character or use of the area.

To claim a public nuisance requires some consideration of an appreciable interference with a public right which causes damage, injury, discomfort or inconvenience to all members of the public.

In discussion the Subcommittee considered in which of a series of options a prohibition of signage could possibly be justified under these rationales.

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Option	Serious offence	Nuisance	Incompatible with character
A defined area in Central City	√	X	?
Living zones	√	X	√
Small business zones	√	X	√
Large business zones	√	X	√
Industrial zones	√	X	?

The Subcommittee instructed staff to provide the following information for the next meeting:

- Further clarification on what issues the Council can control via bylaws
- Clarification of definition of commercial sexual services
- Further details of a possible City-wide regulation
- A possible wider central city area in which a prohibition could be considered that excludes living zones and other 'sensitive' zones
- Details of the different types of industrial zones as a basis for considering whether prohibition or regulation could be applied to some or all of these.

2. NEXT MEETING

The Subcommittee decided to meet again in February 2009 (time and location to be confirmed).

The meeting concluded at 2.38pm.

3. BRIEFING NOTE ON ISSUES RELATING TO BYLAWS MADE TO REGULATE SIGNAGE ADVERTISING COMMERCIAL SEXUAL SERVICES

Introduction

1. This briefing note addresses questions raised by the Brothels Location and Signage Bylaw Subcommittee in late 2008 and concludes that if the Council is satisfied that advertising commercial sexual services could cause serious offence, the Council could introduce a bylaw prohibiting signage advertising commercial sexual services in view of public places. The briefing note discusses, amongst other things, the legal meaning of these words and terms, in particular, "commercial sexual services", "advertising commercial sexual services" and "serious offence to ordinary members of the public".

Background

2. At its meeting on 27 November 2008, the Council;
 - (a) *Determines that under the section 155(1) analysis, there is not sufficient evidence of a problem in regards the location of brothels that needs to be addressed by way of a bylaw.*
 - (b) *Determines that under the section 155(1) analysis, there is sufficient evidence of a problem in regards signage advertising of commercial sexual services that needs to be addressed by way of a bylaw.*
 - (c) *Consider a new bylaw controlling signage advertising commercial sexual services, in conjunction with the Brothels Location and Signage Subcommittee, for adoption under the provisions of the Prostitution Reform Act 2003, and that once any new bylaw is introduced the current Brothels (Location and Signage) Bylaw 2004 be revoked.*
3. At the subsequent 10 December 2008 meeting of the Brothels Location and Signage Bylaw Subcommittee, the Subcommittee considered the criteria in the Prostitution Reform Act 2003 ("the Act") under which the Council could introduce a bylaw controlling advertising in or in view of a public place commercial sexual services. These criteria are contained in section 12(2) of the Act and include the signage likely to cause a nuisance or serious offence to ordinary members of the public using the area or were incompatible with the existing character or use of that area. The Subcommittee determined that the criteria of nuisance as legally defined¹ was likely to be difficult to justify hence decided that the two remaining criteria "serious offence to ordinary members of the public" and "incompatible with the existing character or use of an area" should be considered as rationales for the examination.
4. The Subcommittee also requested further on the following information:
 - clarification of the definition of commercial sexual services
 - the signage issues the Council can control through bylaws
 - clarifying options of either City-wide regulation, or "grey areas" including industrial zones; and
 - options for prohibition of such signage in smaller areas of the City.²

Summary of Advice and Clarification

5. Advice has been obtained from the Legal Services Unit in regard to the matters which the Council may control in regard to signage under the Prostitution Reform Act 2003 (the Act) and some clarity of the definition of "commercial sexual services". These are issues closely related as the Act permits bylaw control relating to the latter explicitly. The view is held that any signage merely advertising a business of prostitution or brothel *per se* by providing the name of the business, address and instructions how to enter would not be a sign advertising commercial sexual services. It would, however, depend on the name of the business used, for example the name "XYZ Brothel" **could** be considered advertising commercial sexual services while XYZ Lounge would not. These would be considered building identification outdoor advertisements if attached to the building in which the services are provided.

¹ To claim a public nuisance exists requires some consideration of an appreciable interference with a public right which causes damage, injury, discomfort or inconvenience to **all** members of the public. Laws of New Zealand, Nuisance at Para 14

² Notes of meeting of the Brothels Location and Signage Bylaw Subcommittee, 10 December 2008

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6. The view is held that commercial sexual services requires the element of physical participation in sexual acts for reward and in addition to sexual intercourse, masturbation procedures and oral sex, the view is held that such could also include activities such as lap dancing and nude massage. [In regard to the latter it is the situation of the masseur being nude that is likely to be caught in the definition rather than the person being massaged as in therapeutic massage situations.]
7. The legal advice is that merely identifying the business with no reference to commercial sexual services is not a matter that could be controlled under the powers contained in the Act. The tests for introducing a bylaw include that the signage is *likely to cause ... serious offence to ordinary members of the public using the area*,³ The view is held that, *...for a Council to be satisfied that a bylaw is necessary on the basis of serious offence to members of the public the signs it was attempting to control would need to be ones that aroused feelings of anger, resentment, outrage and disgust, not just feelings that the signs are tactless, inappropriate and in bad taste*.⁴ It is debatable as to whether **ordinary members of the public** would consider signage specifying that services such as intercourse or oral sex or other matters included in the term commercial sexual services were available, were offensive *per se* or could cause serious offence or whether they were just tactless and in bad taste. It could, of course, relate to where such signs were displayed and whether persons sought them out. Until this matter is tested it could be assumed that a reasonable person may find such public signage offensive in general terms. It should be noted that provisions exist for other means of advertising commercial sexual services [see section 11 of the Act –advertisements are allowed in the classified sections of a newspaper] and a number of web sites are also used for such purposes.

Conclusion

8. Given the matters considered the Council may, if satisfied that such advertising could cause serious offence to ordinary members of the public prohibit any such signage in or in view of a public place advertising commercial sexual services, or being incompatible with the character or use of the area, by way of bylaw. It may be argued that such a bylaw would meet the reasonableness test required to introducing such a bylaw as the power exists to prohibit under the Act, it does not have to comply with the Bill of Rights requirements, it would not restrict the right to advertise the business location and other non sexual services provided there, and other opportunities exist to advertise commercial sexual services. If the Council want to prohibit or regulate some areas of the City but not others, on the grounds that such signage is offensive, it would need to form a view that advertising commercial sexual services in some contexts is offensive and in other areas it is not.

FULL BRIEFING

Commercial Sexual Services

9. The definition of “commercial sexual services” is contained in the Act as *sexual services that – (a) involve physical participation by a person in sexual acts with, and for the gratification of, another person; and (b) are provided for payment or reward (irrespective of whether the reward is given to the person providing the services or another person)*⁵. While there has been only one specific legal case dealing with the definition *per se* the view is held that sexual services in this context must include physical participation. In addition to sexual intercourse, masturbation procedures and oral sex, the view is held that such could also include activities such as lap dancing and nude massage.⁶ It is arguable whether the latter two activities are commercial sexual services, the advertising of which would be controllable through a bylaw. However, on the basis of the advice to date, the Council may regard these activities as being covered by the definition. The Select Committee when reporting on the matter of the definition of “commercial sexual services” clearly considered it related to “physical or intimate contact” and identified that it may include lap dancing and nude massage but excluded stripping and phone sex. It is therefore considered that activities such as “striptease” or “massage” (but possibly not “nude massage” however that may be defined) are not likely to commercial sexual services hence signs advertising these services would not be able to be controlled through a bylaw under the Act.

³ Section 12(2)(a) Prostitution Reform Act 2003

⁴ Judith Cheyne, Solicitor, *Brothels Bylaw – Clarification of legal issues*, 16 January 2009

⁵ Section 4 Prostitution Reform Act 2003

⁶ This advice was provided to the Prostitution Reform Act Subcommittee by David Rolls, Solicitor, in December 2003 and recently confirmed by advice from Judith Cheyne, Solicitor, in an opinion dated 16 January 2009

Signage Advertising Commercial Sexual Services

10. Section 12 of the Act permits territorial authorities to make bylaws prohibiting or regulating signage in, or visible from, a public place, that advertises commercial sexual services. It requires the territorial authority to be satisfied that the bylaw is necessary to prevent signage that is likely to cause a nuisance⁷ or serious offence to ordinary members of the public using the area or is incompatible with the existing character or use of the area. If the above criteria are met such signage may be prohibited or regulated by imposing restrictions on the content, form, or amount of signage on display. It should be noted that the above requirements could apply to any signage within the territorial authority's area not just that attached to premises providing commercial sexual services, for example footpath signs or directional signs on other business premises, or billboards some distance from the business.
11. Legal advice⁸ has been provided that advertising a business of prostitution or brothel business *per se*, such as a sign which gives the name of the business, the address and/or instructions on where to enter, and other information of this nature would not be a sign advertising commercial sexual services, simply because the business was a business of prostitution or brothel. To be a sign that advertises commercial sexual services the advertising on the sign needs to be such that it notifies the availability of, or promotes the sale of, commercial sexual services (the wording of section 11⁹ is relevant, given that there is no separate test for such advertising stated in section 12). However, it would depend on the name of the business and whether the name on its own would be likely to be such that it could be found to notify the availability of, or promote the sale of commercial sexual services. A sign giving the business name as "XYZ Brothel" is likely to be such a sign. But even if it could be argued that a sign advertising just the business name was covered under section 12(1) it is unlikely that the Council could justify the need for a bylaw to prohibit such signs, because of the need to be satisfied of the matters in section 12(2). It would likely be held unreasonable if such a prohibition meant that a sign stating, for example, "Pussycat Lounge, entry on Lichfield Street" – with no other words or pictures, was not allowed, as such a sign would not be one that a reasonable person would find could cause serious offence to ordinary members of the public¹⁰. [See Appendix 1 for a table summarising issues covering signs]
12. Even if a sign included information on some of the things available at the business of prostitution or brothel, then provided those things were not sexual services (for example, that a spa, sauna, coffee/food, etc were available), such signs would not be advertising commercial sexual services. Again, assuming that the definition of commercial sexual services did cover any signage associated with a brothel or business of prostitution it might also be found to be unreasonable for the Council to prohibit such signs as they are not offensive *per se*, and another business such as a hotel spa could easily have similar advertising that the Council would not be able to prohibit. Signs with pictorial representations on them would need to be assessed taking an objective view as to whether the "picture" could be regarded as one that notifies the availability of, or promotes the sale of commercial sexual services. A picture of a provocative looking women's face is not likely to do this, but a picture of a topless women might, particularly when associated with a brothel/business of prostitution and not as an advertisement for a theatre production. However, it is to be noted that in the *Robinson* case¹¹ the judge found that a "mere strip tease" would not constitute prostitution. A picture of a topless woman on a sign that is associated with a striptease business, and not one that provides commercial sexual services is not likely to be a sign that could be regulated under a PRA bylaw.

Regulation or prohibition of signage advertising commercial sexual services on the basis that they are incompatible with the existing character or use of the area

13. Section 12(2)(b) provides for the above power to either regulate or prohibit such signage based on incompatibility with the character or use of an area. The issues which need to be considered are, in addition to those above, what areas of the City can be reasonably set down to either regulate or prohibit such signage.

⁷ To claim a public nuisance exists requires some consideration of an appreciable interference with a public right which causes damage, injury, discomfort or inconvenience to **all** members of the public. Laws of New Zealand, Nuisance at Para 14

⁸ Judith Cheyne, 16 January 2009, *op cit*

⁹ Section 11(3) states; *in this section, advertisement means any words, or any pictorial or other representation, used to notify the availability of, or promote the sale of, commercial sexual services, either generally or specifically.* In *JB International v Auckland CC [2006] NZRMA401*, the Court noted that section 12 should be read in conjunction with section 11

¹⁰ Judith Cheyne, 16 January 2009, *op cit*

¹¹ *R v Robinson 1978 1 NZLR 709*

The character of residential or living zones under the City Plan or District Plan

14. These include such areas as Living 1 (Outer Suburban); Living 2 (Inner Suburban); Living 3 (Medium Density); L 4A (Central City – Diverse); and Living H (Hills) zones under the City Plan and the Akaroa Hill Slopes; Residential Conservation; Small Settlement; and Rural-Residential Zones of the Banks Peninsula District Plan provide for relatively low density development and aim for high amenity standards and limited provision for commercial activities.

Small owner operated brothels (SOOBs) and residential areas or living zones

15. In general it is considered that small owner operated brothels (SOOBs) are generally situated in residential areas, or living zones under the City or District Plan as “home occupations” or “home enterprises”, and any signage advertising commercial sexual services may not be compatible with the existing character or use of the areas. However, such operations are relatively common in these areas and there has been no indication that SOOBs desire to have such signage. It is therefore considered that on these grounds, signage advertising commercial sexual services could be prohibited.

Commercial sexual services and residential areas or living zones

16. The character of suburban or residential living zones under the City or District Plans is largely distinguished by low density permanent living accommodation, with some provision for local community facilities, home occupations, and recreational activities. The latter activities are subject to standards to ensure they are compatible with the character, scale and amenities of low density suburban living. It could be argued that permitting signage advertising commercial sexual services in living or residential zones, despite such an activity being legal, could lead to reactions from persons who object to such activities which could cause disturbance to persons in the area. Specific advertising of the availability of commercial sexual services may be considered incompatible with the character of such areas.

The character of commercial or business zones under the City Plan or District Plan

17. These include the Central City; Business 1; Business 2; Business 2P; Business RP; and Central City Edge zones under the City Plan and the Town Centre zone under the District Plan. Most are either close to, or can contain, residential properties.
18. The Central City area has the greatest concentration of commercial and cultural infrastructure; contains a large proportion of the City's premises holding liquor licences under the Sale of Liquor Act and is subject to a ban on the consumption of alcohol in public places under another bylaw.¹² The majority of premises operating as businesses of prostitution, as far as can be determined, are situated within the area. Sex shops are apparent in the area and there are at least two strip tease premises. Proportionally there are high levels of crime within the central city area, including serious and minor assaults, sexual attacks, disorder, and drunkenness. Conversely, the area also contains Cathedral Square, Victoria Square and Worcester Boulevard [which are not included in the area in which signs are permitted in the First Schedule of the bylaw] and City Mall as another important pedestrian precinct.
19. There has been no evidence of any signage advertising commercial sexual services under the bylaw¹³ [See Appendix 2 for signage requirements under the current bylaw] that may cause serious offence to reasonable members of the public from any of the premises within the area, indeed none have even used signage that would be controlled under the bylaw. As far as can be determined, only three premises within the central city area are situated north of Lichfield Street, two of which are permitted to have signage under the bylaw, with the remaining seven located south of Lichfield Street, which are also permitted to have the current signage. Given the character of the area, at least south of Lichfield Street, it is unlikely that any limited signage complying with City Plan requirements, and avoiding content containing material likely to cause serious offence to ordinary members of the public, would be inconsistent with the character of the area.

¹² Christchurch City Liquor Control Bylaw 2004

¹³ Christchurch City Brothels (Location and Signage) Bylaw 2004

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20. The Central City Edge zone is under going transition from industrial use to mixed residential and service industries. The development of open space and enhancement of amenity is being sought. Until that development is clear the character of the area, currently containing a large number of undeveloped or vacant sites, is difficult to identify.
21. There are somewhat more difficulties in determining the appropriateness of allowing signage advertising commercial sexual services in the various business zones throughout the City or the Town Centre zone under the District Plan. Business 1 zones under the City Plan do provide for retail activities above ground level but often adjoin residential areas, and can form a buffer between Business 2 (District Centre Core) zones and adjoining residential areas. The advertising of the business, if it does not explicitly mention commercial sexual services would be permitted, but the character of these areas would appear to preclude allowing the advertising of commercial sexual services.

The character of other business or industrial zones

22. These include the B3B, B4, and B5 under the City Plan and the Industrial, Lyttelton Port and Boat Harbour zones under the District Plan.
23. These generally have less amenity controls than other zones due to the activities undertaken and, to a degree, a lower expectation on environmental outcomes.

The character of other zones

24. These include all the Conservation zones and Open Space zones and Cultural Zones under the City Plan and the SP (ped Precinct) Zone. Generally these are limited to exposure to commercial activities and have a large part in recreational activities.

Conclusion on applying controls based on the character of areas

25. Given the distribution of residential areas throughout the City, and the closeness to other zones, together with the changing nature of the areas, it is difficult to determine any areas where the character may be suitable to permit signage advertising commercial sexual services, with the exception of the Central City, or part thereof, and perhaps some of the industrial zones where environmental outcomes and amenity issues are low. If the Council wants to prohibit or regulate some areas of the City but not others it would need to form a view that advertising commercial sexual services in some contexts is compatible with the character or use of some areas and in other areas it is not.

APPENDIX 1– SIGNS ABLE TO BE COVERED BY BYLAW UNDER SECTION 12

Sign content	Able to be included in a bylaw	Reason
Name of business does not state or imply the provision or availability of commercial sexual services e.g. "XYZ Lounge"	No	No, not "advertising commercial sexual services"
Name of business states or implies the provision or availability of commercial sexual services e.g. "XYZ Brothel"	Yes	If clearly advertising commercial sexual services, yes. If not clear, may require further analysis/consideration
Information about location, directions, etc.	No	Not considered to be advertising commercial sexual services
Describing or listing available sexual services	Yes	If clearly advertising commercial sexual services, yes.
Other services provided	No	If other services are not commercial sexual services, e.g. spa, sauna, no.
Pictures/images	Yes	If clearly advertising commercial sexual services, yes. If not clear, may require further analysis/consideration

APPENDIX 2 – CURRENT SIGNAGE REQUIREMENTS UNDER BROTHELS (LOCATION AND SIGNAGE) BYLAW 2004

The Brothels (Location and Signage) Bylaw 2004 permits limited signage on premises operating as brothels as determined at the time of introduction of the bylaw. The area, in the First Schedule of the bylaw, consists of three areas within the central city, largely zoned for commercial or industrial uses, although provision does exist for residential activity including that of travellers' accommodation. At the time of its introduction the majority of then existing "massage parlours" were contained within the defined area. It was presumed most would be providing commercial sexual services.

The permitted signage must meet the following criteria;

- (a) that sign is affixed to the premises in which commercial sexual services are provided;
- (b) those premises are situated within an area of the City which is delineated on the map in the First Schedule.
- (c) the sign must not display any information other than;
 - (i) the name of the business which provides those commercial sexual services; or
 - (ii) the name of the person conducting the business of providing those commercial sexual services; or
 - (iii) the number of the property on which the premises are situated.
- (d) must not display any pictorial image; or exceeds 0.3 square metres in surface area; or be illuminated by any flashing light.
- (e) only one sign is permitted unless the premises have more than one street frontage in which case there may be displayed upon the premises one sign at each street frontage of those premises¹⁴.

It is unlikely that the signage allowed could be considered to be advertising the availability of commercial sexual services in any event, unless the name of the business notified or promoted those services.

¹⁴ Clause 5, Christchurch City Brothels (Location and Signage) Bylaw 2004